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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALAN WARENSKI, individually and on
behalf of all and others similarly situated,

Plaintiff,

v.

CHARTER COMMUNICATIONS d/b/a
SPECTRUM,

Defendant.

Case No.: 2:19-cv-00101-RFB-NJK

**STIPULATION AND ORDER EXTENDING
STAY OF PROCEEDINGS**

STIPULATION

Plaintiff Alan Warenski and Defendant Charter Communications, Inc., incorrectly sued as
“Charter Communications d/b/a Spectrum” (“Charter”), hereby stipulate and agree as follows:

1. Plaintiff commenced this putative class action on January 17, 2019 (ECF No. 1).
2. This lawsuit arises under 47 U.S.C. § 227(b)(1)(A)(iii) of the Telephone Consumer Protection Act (“TCPA”). Plaintiff alleges that Charter called Plaintiff using an “automatic telephone dialing system” (“ATDS”) and a prerecorded voice without Plaintiff’s prior express consent, in violation of the TCPA.

3. On June 17, 2020, presented with a stipulation from the parties, the Court stayed this action (ECF No. 55) in its entirety pending a ruling from the Supreme Court in *Barr v. American Ass’n of Political Consultants*, Case No. 19-631 (“AAPC”).

4. On July 6, 2020, the Supreme Court decided AAPC. *See* 2020 WL 3633780, at *1. The Supreme Court found that the government debt collection exception was unconstitutional, but saved 47 U.S.C. § 227(b)(1)(A)(iii) of the TCPA by severing the unconstitutional government debt collection exception from Section 227(b)(1)(A)(iii). *See AAPC*, 2020 WL 3633780, at *5 (“The initial First Amendment question is whether the robocall restriction, with the government-debt exception, is content-based. The answer is yes.”); *see also id.*, at *2 (noting six Justices agree that, through the automated call ban, Congress has “impermissibly favored debt-collection speech over political and other speech, in violation of the First Amendment”).

5. Three days after the AAPC decision, the Supreme Court granted certiorari in *Facebook, Inc. v. Duguid*, No. 19-511 (Jan. 9, 2020) (“*Duguid*”), a case from the Ninth Circuit.

6. In *Duguid*, the Supreme Court will take up the question of “[w]hether the definition of ATDS in the TCPA encompasses any device that can ‘store’ and ‘automatically dial’ telephone numbers, *even if the device does not ‘us[e] a random or sequential number generator.’*” *See* Question Presented, *Facebook, Inc. v. Noah Duguid*, No. 19-511 (S. Ct.) (emphasis added); *see also* Order Granting Petition for Writ of Certiorari, *Facebook, Inc. v. Noah Duguid*, No. 19-511 (S. Ct. July 9, 2020).

7. In *Duguid*, the Supreme Court is poised to issue a potentially controlling decision resolving the current circuit split on the definition of an ATDS. The circuit courts of appeals have reached divergent conclusions concerning the proper *statutory* definition of an ATDS.

8. Specifically, the Third, Seventh, and Eleventh Circuits have recognized that an ATDS is a device that can “(1) store telephone numbers using a random or sequential number generator and dial them or (2) produce such numbers using a random or sequential number generator and dial them.” *See Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d 1301, 1306 (11th Cir. 2020); *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 468 (7th Cir. 2020); and *Dominguez v. Yahoo, Inc.*, 894 F.3d 116, 119 (3d Cir. 2018).

1 9. By contrast, the Second, Sixth, and Ninth Circuits have adopted a more expansive
2 definition of an ATDS, concluding that it is “the capacity to ‘store’ numbers [that is] required
3 under the TCPA to be considered ATDSs,” and that such a device must “dial numbers without
4 human intervention.” *See Duran v. La Boom Disco, Inc.*, 955 F.3d 279, 287 (2d Cir. 2020);
5 *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018); *Allan v. Pa. Higher Educ.*
6 *Assistance Agency*, No. 19-2043, 2020 WL 4345341, at *9 (6th Cir. July 29, 2020).

7 10. The parties believe that a definitive resolution of the controlling definition of an
8 ATDS will issue shortly by the Supreme Court during this term, warranting a stay here pending
9 the *Duguid* action.

10 11. The parties therefore agree that this action should be stayed in its entirety pending
11 a ruling from the Supreme Court in the *Duguid* case.

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12. Therefore, the parties respectfully request that the existing stay order entered on June 17, 2020 be extended pending the Supreme Court's decision in *Duguid*.

DATED this 11th day of August, 2020.

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/s/ Miles N. Clark

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ORDER

IT IS SO ORDERED.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

Dated: August 12, 2020